

NTSB Order No.
EM-59

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 9th day of May 1977.

OWEN W. SILER, Commandant, United States Coast Guard

v.

ARNE J. LESKINEN, Appellant.

Docket ME-57

ORDER DISMISSING APPEAL

The Commandant's decision on Appeal No. 2059 affirmed an order of admonition against the appellant, a licensed vessel master, entered by Administrative Law Judge Thomas L. Mackin. Appellant was charged before the law judge with negligence arising out of a collision between his vessel, the M/V H. LEE WHITE, and the M/V GEORGIOS A in the St. Clair River on December 11, 1974.

After holding a full evidentiary hearing, the law judge issued the initial decision in which he found one specification proved that "information of the proximity and approach of another vessel was available to [appellant] (from radar observation)...," and ordered that appellant "be formally ADMONISHED" for failing to navigate with caution.¹ The Commandant, on review, determined that the initial decision also contained contradictory findings, adopted by the law judge, which negated the allegations in the specification found proved.² On the basis of his own substituted findings, the Commandant nonetheless affirmed the sanction ordered by the law judge.

Appellant has filed a brief in support of his appeal to the Board, contending that the Commandant made erroneous findings, shifted the burden of proof, and violated standards of review. Counsel for the Commandant has submitted a reply brief with respect to the contentions raised. Neither party has addressed the

¹Copies of the decision of the Commandant and the law judge are attached.

²C.D., 9.

dispositive question of whether we have jurisdiction over the subject matter. However, it plainly appears that our authorizing statute does not contemplate review of the Commandant's decision on appeal from an order of admonition.

The Safety Board's appellate review function in the maritime field is set forth in 49 U.S.C. 1903(a)(9)(B). It extends to decisions of the Commandant on appeals from orders of any administrative law judge revoking, suspending, or denying a license... in proceedings under section 4450 of the Revised Statutes of the United States (46 U.S.C. 239)...." All prior proceedings in this case were governed by 46 U.S.C. 239, which provides for suspension or revocation of licenses held by ship's officers found guilty of negligence.

Neither of the statutory sanctions was imposed by the law judge. Instead, he applied the minimum sanction permitted under Coast Guard regulations, namely an order of admonition.³ No mention is made of this type of order in our statute, which contains a specific listing of the orders which are reviewable. It follows that we have no jurisdiction in this case and that the Commandant's decision, affirming the order of admonition against appellant, represents the final administrative action to be taken.

ACCORDINGLY, IT IS ORDERED THAT :

The instant appeal from the decision of the Commandant be and it hereby is dismissed.

TODD, Chairman, BAILEY, Vice Chairman, McADMAS, HOGUE, and HALEY, Members of the Board, concurred in the above order.

³46 CFR 5.20-10(b) provides that "If a charge is found `proved,' the administrative law judge shall order an admonition, suspension ... or revocation."